

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT SMITH, Jr.,

Petitioner,

v.

BELINDA STEWART,

Respondent.

CASE NO. C07-166-RSL-MJB

ORDER DISMISSING § 2254 PETITION

The Court, having reviewed petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, the Report and Recommendation of the Honorable Monica J. Benton, United States Magistrate Judge, any objections thereto, and the balance of the record, does hereby find and ORDER:

- (1) The Court adopts the Report and Recommendation.
- (2) Petitioner's § 2254 petition is DISMISSED without prejudice because the court is without jurisdiction to consider it until the Ninth Circuit Court of Appeals has authorized its filing. Petitioner's application for leave to proceed *in forma pauperis* (Dkt. #1) is DENIED as moot.
- (3) The Clerk is directed to send copies of this Order to petitioner and to Judge Benton.

DATED this 12th day of March, 2007.



Robert S. Lasnik  
United States District Judge

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